IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 29 of 2005

Date of Decision: 6.10.2010

Balbir Singh

....Appellant.

Versus

C.I.T.-II

...Respondent.

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. S.K. Mukhi, Advocate with
Ms. Jyoti, Advocate for the appellant.

Ms. Urvashi Dhugga, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal was admitted by this Court for consideration of following substantial question of law:-

> "Whether the finding of the Tribunal in support of its conclusion that the gift received by the appellant is not genuine, is perverse being based on erroneous facts and considerations?"

2. Facts necessary for adjudication as narrated in the appeal are that the appellant is an individual and engaged in the business of sale and purchase of jewellery items and received a gift of Rs.1 lac from Harcharan Singh during the previous year relevant to the assessment year in question. The assessee filed his return on 26.7.1994 declaring an income of Rs.93,180/-. During the course of assessment

proceedings, the assessee explained to the Assessing Officer that he received the said amount of Rs.1 lac from his childhood friend in the hour of need. The Assessing Officer relying upon the judgment of this Court in **Lal Chand Kalra v. CIT, [1981] 22 CTR 135** held that the gift received by the appellant was compensatory and was liable to be taxed under Section 68 of the Income Tax Act, 1961 (in short "the Act"). Feeling aggrieved, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "the CIT(A)"], who vide order dated 22.12.2003 upheld the view of the Assessing Officer. On further appeal by the assessee, the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (in short "the Tribunal") vide order dated 31.8.2004 affirmed the orders passed by the authorities below. Hence, the present appeal by the assessee.

3. We have heard learned counsel for the parties and perused the record.

4. The point that arises for consideration in this appeal is whether the finding recorded by the Tribunal that the gift received by the assessee from the Non-Resident Indian was valid and genuine is correct.

5. The assessee had claimed that he had received the gift from Shri Harcharan Singh, Non-Resident Indian which was treated to be undisclosed income of the assessee by the Assessing Officer, CIT (A) as well as by the Tribunal. The Tribunal while upholding the finding of the authorities below had recorded as under:-

> "In the present case, the assessee had claimed that the gift received by him from Shri Harcharan Singh NRI was

exempt u/s 5 of GT Act. The Assessing Officer disallowed the claim of the assessee by stating that it was a compensatory receipt because there was no occasion to receive the gift from a stranger to make the gift genuine as per ratio of the decision of Hon'ble High Court of Punjab and Haryana in the case of Lal Chand Kalra (Supra). Action of Assessing Officer had been confirmed by the Ld. CIT (A). It is true that any amount given under natural love and affection without any consideration can be considered as gift. The relevant thing which is required to be there is that the gift should be without any consideration and under natural love and affection. It is not disputed that love and affection can be amongst the relatives, friends or the persons who are known to each other very closely. Sometimes, distant persons can be close than the close relatives. However, there was no parameter to judge this type of relationship. It can only be judged from the circumstantial evidences. In the present case the assessee had furnished copy of affidavit from the alleged donor, Shri Harcharan Singh son of Shri Baldev Singh resident of village Charrian, P.O. Singh Bhagwantpur, Tehsil & District Ropar (Punjab). The above affidavit is without any date and had been attested by the Notary, Shri Santokh Singh Gill on 15.12.1999. The contents of the said affidavit are following:-

"I, Harcharan Singh son of Shri Baldev Singh resident or village Charrian, P.O. Singh Bhawantpur, Tehsil and District Ropar (Punjab) do hereby solemnly affirm and declare as under:-

1. That I the above named deponent is the permanent resident of the above village and place.
2. That Shri Balbir Singh s/o Shri Amar Nath Verma sole prop. of M/s Bela Jewellery House, Main Bazar Ropar is my very close friend, due to relationship of my close friend, I had gifted a sum of Rs.1,00,000/- (Rupees One Lac only) to my above said friend Shri Balbir Singh in the year 1988 at the time of Income Tax raid, he will become finance crises.
3. That in the year of 1993, due to his weak financial position I had gifted a sum of Rs.1,00,000/- (Rupees One Lac) without any interest to the said friend sole owner of the above said shop out of my NRI saving account.

Verification:

Verified that the contents stated above in the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

Sd/-

Deponent Harcharan Singh

Attested

Notary, Santokh Singh Gill with Seal."

It is relevant to point out that the Assessing Officer passed the assessment order on 10/17.03.1997. Therefore, the affidavit had not been furnished before the Assessing Officer during assessment proceedings because it is attested by the Notary on 15.12.1999. In the affidavit, the alleged donor has stated that he is resident of village Charrian. He no where stated that he is non-resident and made the gift to the assessee when he was residing abroad. In the said affidavit, the alleged donor, Shri Harcharan Singh had mentioned that he gifted a sum of Rs.1.00 Lac in the year 1988 at the time of income tax raid. However, the gift had been claimed to be given on 17.08.1993, in the another para of the affidavit it had been stated that the gift was given in the year 1993 due to weak financial position and that the gift was without any interest. Usually the term, 'without any interest' is used for the 'loan' and not for the 'gift' because in the 'gift' there is no consideration and it is unrecoverable but in the case of 'loan' it can be received back by the payer and it may be with or without any interest. From the above discussions, it would be clear that the contents of the affidavit given by the alleged donor, Shri Harcharan Singh are contradictory. It is also

noticed from the copy of the statement of S.B. Account N.R.E. 67 maintained in the name of Shri Harcharan Singh with State Bank of Patiala, Extension counter Singh Bhagwantpur (Kurali) that there was only one credit entry on 17.8.1993 and there are two debit entries on 14.09.1993 for a sum of Rs.1,00,125/- and another on 14.02.1994 for a sum of Rs.5,000/- it seems that the amount had been deposited in the aforesaid bank account just to show that the alleged gift had been given to the assessee through banking channel. It is also noticed that in the affidavit, no where relationship with the assessee had been mentioned by Shri Harcharan Singh the alleged donor. The gift had been claimed to be given by DD on 14.09.1993 as appearing in the copy of bank account of Shri Harcharan Singh. However, nothing had been brought on record that Shri Harcharan Singh was residing at village Charrian, P.O. Singh Bhawantpur at that point of time. It is also relevant to point out that the assessee had not produced the donor before the Assessing Officer and also not disclosed his address of Dubai. Therefore, it cannot be ruled out that the alleged donor was a stranger to the assessee. It is also relevant to point out that the assessee had not established that there was any occasion on which the alleged donor had gifted a sum of Rs.1.00 lac. Furthermore, no relationship had been established by

the assessee but he simply stated that he is close friend of the donor, Shri Harcharan Singh, however, that too had also not been proved by documentary evidence. Hon'ble Delhi High Court in the case of Sajan Dass & Sons v. CIT, 264 ITR 435 (Supra) held as under:-

> "that a mere identification of the donor and showing the movement of the gift amount through banking channels was not sufficient to prove the genuineness of the gift. Since the claim of the gift was made by the assessee, the onus lay on him not only to establish in identity of the person making the gift but also his capacity to make a gift and that it had actually been received as a gift from the donor. Having regard to the inquiries conducted by the Assessing Officer from the bank, with which the assessee was admittedly the donor was not related to the assessee, the findings recorded by the Tribunal were pure findings of fact warranting no interference. The appeal was liable to be dismissed."

In the instant case also the assessee, to prove the identity of the alleged donor had filed his affidavit and copy of bank statement. However, that was not sufficient to prove the genuineness of the gift. It is also true that the onus was on the assessee to establish the identity of the person making gift and also his capacity to make the gift. However, from the copy of the account, it cannot be

established that the alleged donor was having the capacity to donate a sum of Rs.1.00 lac to the assessee particularly when only one entry of Rs.1,10,000/- had been transferred in the NRE account of Shri Harcharan Singh. The assessee had also not furnished copy of his bank account to rebut the findings of the Assessing Officer that it was compensatory gift, which he could easily have proved by showing that there was no withdrawal in his bank account on the date or the nearby date of withdrawal in the NRE account of Shri Harcharan Singh, in the opinion, Ld. CIT (A) rightly observed that:-

> "In the absence of conclusively proved habit of donating his hard earned money of the donor, it is difficult to treat the said gift to be a natural phenomena."

In the instant case, as we have already noted herein above that there was only one credit of Rs.1,10,000/- in the NRE account of the alleged donor so, it is difficult to believe that he had donated his hard earned money to the assessee particularly when he was not having any relationship with the assessee and there was no occasion for making such gift. From the evidence placed on record i.e. copy of the bank account of the alleged donor, Shri Harcharan Singh it cannot be said that he was earning such a huge amount that donation of Rs.1.00 Lac was a meager amount for him. In the

absence of necessary evidences, it cannot be considered that the alleged donor was a man of means. Considering the totality of the facts as narrated hereinabove, we are of the view that the Ld. CIT (A) was justified in upholding the order of Assessing Officer for making the addition on account of no genuine gift considering the same as own income of the assessee. We do not see any valid ground to interfere with the findings of the Ld. CIT(A)."

6. The Tribunal while affirming the findings of the Assessing Officer and CIT (A) had concluded that gift was not genuine. The Tribunal, *inter alia,* recorded the following reasons:-

(a) there was no occasion for Harcharan Singh, NRI-donor to have given gift to the assessee.

(b) the affidavit furnished from the donor did not bear any date and had been attested on 15.12.99 whereas assessment order had been passed on 10/17.3.1997. The same was never furnished before the Assessing Officer. There were certain contradiction in the affidavit which are :-

(i) there is no mention in the affidavit that the donor was non resident and was residing abroad at the time of making gift,

(ii) that gift had been given on 17.8.1993 whereas in one of the paras there is reference in the affidavit to gift of Rs.1 lac in the year 1988 at

the time of income tax raid,

(iii) the gift had been given 'without any interest' whereas in case of gift payment of interest does not arise,

(c) a perusal of NRE account in the name of the donor showed that there was only one credit entry on 17.8.1993 and there were two debit entries, i.e. on 14.9.1993 for a sum of Rs.1,00,125/- and another on 14.2.1994 for Rs.5000/-. Therefore, amount had been deposited in the said account immediately before making the gift to show the same to be through banking channel.

(d) there is no relationship with the donor except claim of close friendship.

(e) the donor was not produced before the Assessing Officer.

(f) the address of the donor of Dubai had not been disclosed."

7. Learned counsel for the assessee-appellant could not refer to any material on the basis of which it could be said that the finding reproduced above is erroneous or perverse. However, strenuous efforts were made by the learned counsel to persuade this Court to record that the gift received from Shri Harcharan Singh, Non-Resident Indian was genuine by re-appreciating the evidence which is not permissible under Section 260A of the Act. The finding recorded being based on record cannot be said to be perverse. The authorities have

arrived at a plausible view on appreciation of evidence which cannot be interfered with under Section 260A of the Act.

8. Accordingly, the question of law, reproduced above, is answered against the assessee and in favour of the revenue.

9. Consequently, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 6, 2010 **(ADARSH KUMAR GOEL)**
gbs **JUDGE**